In the High Court of Judicature at Madras

Dated : 18.09.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1254 of 2007

Commissioner of Income Tax
Chennai .. Appellant

Vs

Mr.B.Tiburtius
18, R.K.Nagar, II Cross St.,
Thiruvanmiyur
Chennai - 41. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 20.4.2007 made in I.T.A.No.795/Mds/2003 for the assessment year 1998-99 From the Commissioner of Income Tax (Appeal) Chennai in ITA.No.57/2002-2003 of 21.01.2003 and against the Assessment order of Company Circle IV (3) Chennai dated 15.03.2002 in PAN.No./G.I.No.AAAPT3336-N/MT+1A.

For Appellant : Mr.J.Nareshkumar

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 20.4.2007 made in I.T.A.No.795/Mds/2003 for the assessment year 1998-99.

2. The assessee is an individual. For the relevant assessment year, the assessee filed income tax return and claimed deduction under Section 54F on purchase of house property during the financial year relevant to the assessment year 1997-98 and the same was allowed by the Department.

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Subsequently, for the instant assessment year, the assessee claimed deduction under Section 54F for an amount of Rs.8,01,055/- being the amount spent towards repairs i.e., improvement of the house purchased during the earlier previous year. The assessing officer disallowed the claim of the assessee. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) allowed the claim of the assessee following the decision of the Madras High Court in the case of COMMISSIONER OF INCOME-TAX VS. P.V.NARASIMHAN (1989) 47 TAXMAN 89 = 181 ITR 101. Aggrieved by the order of the Commissioner of Income-tax (Appeals), the revenue filed appeal before the Income-tax Appellate Tribunal The Income-tax Appellate Tribunal relying upon the decision of this Court in the case of COMMISSIONER OF INCOME-TAX VS. P.V.NARASIMHAN (1989) 47 TAXMAN 89 = 181 ITR 101 upheld the order of the Commissioner of Income-tax (Appeals) and dismissed the appeal of the Department. The correctness of the said order is canvassed by the revenue in this appeal by formulating the following questions of law:

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that improvement of residential property also would be eligible for the benefit of Section 54F of the Income-tax Act?"

3. Learned counsel appearing for the revenue submitted that in the facts and circumstances of the case the invocation of Section 54-F of the Income-tax Act is not applicable to the facts of the present case. The assessee has only improved the assets purchased arising out of the capital gain, which is not contemplated under Section 54F of the Income-tax Act.

4. We heard the argument of the learned counsel for the revenue and perused the materials on record.

5. The Tribunal in its order has categorically stated that the assessee has explained that he did not make any investment in new property. The assessee did purchase only one property in 1997-98 and the amount of Rs.8,01,005/- spent in the assessment year 1998-99 was only towards the improvement of the property. Before the Commissioner of Income-tax (Appeals), the assessee did furnish an affidavit stating that he did not own any property other than No.18, Radhakrishnan Nagar, Thiruvanmiyur, Chennai - 600 041. The Commissioner of Income-tax (Appeals) sought the comments of the assessing officer on the factual details. The assessing officer by his letter dated 23.12.2002 confirmed that there was no purchase of second property by the assessee and the assessing officer also mentioned in that letter the assessee was eligible for deduction under Section 54F(1) to the extent of Rs.41,46,865/-.

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6. From the above said factual circumstances of the case, and following the decision of this Court in the case of COMMISSIONER OF INCOME-TAX VS. P.V.NARASIMHAN (1989) 47 TAXMAN 89 = 181 ITR 101 wherein it was held that the expenses involved in construction of first floor could be allowed under Section 54 of the Income-tax Act. Further, in view of the explanation offered by the assessing officer himself pursuant to the clarification sought for by the Commissioner of Income-tax (Appeals) that the assessee is entitled to deduction under Section 54F, we do not find any material for entertaining this appeal and the appeal is therefore dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   Chennai-600 034
2. The Commissioner of
   Income-tax (Appeals)- V
   Chennai
3. The Asst.Commissioner
   of Income Tax, Company Circle IV(3)
   Chennai-34.
4. The Assistant Registrar,
   Income-Tax Appellate Tribunal
   Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai - 90.

1 cc To Mr.Pushya Sitaraman, Standing Counsel for I.T.Cases, SR.58520.

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SSV(CO)
RVL 25.09.2007

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